

JOSEPH P. RUSSONIELLO (CABN 44332)
United States Attorney

BRIAN J. STRETCH (CABN 168973)
Chief, Criminal Division

KEVIN J. BARRY (CABN 229748)
DENISE MARIE BARTON (MABN 634052)
Assistant United States Attorneys
450 Golden Gate Avenue, Box 36055
San Francisco, California 94102
Telephone: (415) 436-7200
Facsimile: (415) 436-7234
Email: kevin.barry@usdoj.gov
denise.barton@usdoj.gov

Attorneys for United States of America

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
FRANK SALVADOR SOLORZA,)
)
Defendant.)
)

No. CR. 09-0217 PJH

**SECOND NOTICE OF CO-
CONSPIRATOR STATEMENTS**

Trial Date: June 21, 2010
Court: Hon. Phyllis J. Hamilton

INTRODUCTION

As stated during the June 18, 2010 conference call with the Court and defense counsel, in the course of preparing witnesses for trial, the United States has identified additional co-conspirator statements which it intends to offer at trial. The standards for admissibility of co-conspirator statements are set forth in the *United States' Second Motion in Limine to Admit Co-Conspirator Statements* (Docket No. 74), which is incorporated herein. The grounds for admissibility of the specific statements identified herein are set forth below.

SECOND NOTICE OF CO-CONSPIRATOR STATEMENTS
CR 09-0217 PJH

ARGUMENT

A. Additional Co-Conspirator Statements To Be Offered By the United States

The specific statements have been set forth in bold.

Statement Date	Witnesses / Participants	Statement
February 3, 2009, approximately 11:00 a.m.	Jesus Escatel	Jesus Escatel received a phone call from a person with a woman's voice, and who may have been disguising her voice. This person told Escatel that he should "pay the money" and "not be stupid," otherwise there would be problems with immigration. The caller told Escatel that some other person in a similar situation paid the money and that this person ended up being okay.
February 6, 2009, approximately 5:00 p.m.	Jesus Escatel	Escatel received another phone call from a person he believed was the same person who made the February 3, 2009 call. The caller again said he should "pay the money" and "not be stupid," otherwise there would be problems with immigration. The caller again told Escatel that some other person in a similar situation paid the money and this person ended up being okay. The caller also said "don't be stupid" and "you've got kids."
February 7 or 8, 2009, approximately 8:00 p.m.	Jesus Escatel	Escatel received a call from a person who had a man's voice. The caller told Escatel not to worry and that everything will turn out okay, as long as they paid the money. This male voice repeated many of the same statements that were made during the February 3 and 6,

		2009 calls identified above - specifically that he should "pay the money" and "not be stupid," otherwise there would be problems with immigration and that some other person in a similar situation paid the money and this person ended up being okay. The caller also said "don't be stupid" and "you've got kids."
February 10, 2009	Jesus Escatel	Escatel received a call on the morning of February 10, 2009 in which a caller asked, as if confirming, that Escatel was ready to pay the money that afternoon.

None of these statements were recorded.

C. The Statements to Be Offered Meet the *Bourjaily* and *Larson* Tests

1. The Existence of the Conspiracy

The content of the co-conspirator statements identified above are all the same type of statements as identified in the first *Notice of Co-Conspirator Statements* (Docket Nos. 94 and 97) - demands of money to "fix" the victims' immigration status; threats about what would happen if the money was not paid; and confirmation of payment of the money. The nature of these statements - and involvement of more than one person as shown by the delivery of the February 2, 2009 letter by one person, calls from other persons, and attempted pick up of money by the defendant - show the existence of an agreement to extort money from the victims by claiming to be an immigration official.

2. The Defendant's and His Co-Conspirators' Connection to the Conspiracy

The delivery of the extortionist letters; the several calls made by the unknown co-conspirators identified above and in Docket Nos. 94 and 97 (some of which were made from the defendant's telephone); and the arrival of the defendant to effect what was discussed during these calls - the pick-up of the money from his victims - show that the unknown co-conspirators and

1 the defendant were working in concert to extort money from the Escatel family.

2 The defendant's connection to the conspiracy is most obviously shown by his arrival, on
3 the bicycle, in the clown suit, to pick up the demanded money. The defendant's chosen clothing
4 and arrival on a bicycle was not a coincidence, but was exactly as described by the caller to the
5 victim, thereby showing the defendant's connection to the conspiracy.

6 The identify of the co-conspirator speakers of the statements is unknown. The speakers
7 of the statements identified above are believed to be the unknown co-conspirators identified in
8 Count 1 of the *Superseding Indictment*. Within the identified calls, the unknown co-conspirators
9 demand money, threatened consequences if the money was not paid, and confirmed that payment
10 would be made. These co-conspirator statements are not the sort in which a meaning or
11 connection to the object of the conspiracy is inferred or subject to argument.

12 3. The Statement Was Made During and in Furtherance of the Conspiracy

13 The nature of the statements themselves - the demands, the threats, and the confirmation
14 of the money pick up - all show that the calls were made during and in furtherance of a
15 conspiracy to extort money from members of the Escatel family.

16 **CONCLUSION**

17 The United States respectfully submits that it has made the necessary preliminary
18 showing under *United States v. Bourjaily*, 483 U.S. 171, 175-76, 181-82 (1987) and *United*
19 *States v. Larson*, 460 F.3d 1200, 1212 (9th Cir. 2006) for this Court to admit the proffered co-
20 conspirator statements.

21
22 DATED: June 19, 2010

Respectfully Submitted,

23 JOSEPH P. RUSSONIELLO
24 United States Attorney

25 /s/
26 KEVIN J. BARRY
27 DENISE MARIE BARTON
28 Assistant United States Attorneys